Supreme Court, U.S.
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In The

Supreme Court of the United States

THE LAKE PARK POST, INC. and AL PARSONS,

Petitioners,

vs.

KEVIN FARMER,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Georgia

PETITION FOR WRIT OF CERTIORARI

J. CONVERSE BRIGHT
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Lake Park Post, Inc.
and Al Parsons

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QUESTION PRESENTED FOR REVIEW

Whether a newspaper writing about a public official on a controversial subject is guilty of actual malice by publishing articles that do not contain information that contradicts the newspaper's version of the events.

PARTIES TO THE PROCEEDING

Lake Park Post, Inc., a privately owned company, which has no parent company

Al Parsons, an individual

Kevin Farmer, an individual

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CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS

i. *Kevin Farmer v. Lake Park Post, Inc., Al Parsons and Charles Moore*, Civil Action No. 2000-CV-308, Superior Court Of Lowndes County, Georgia, July 8, 2002. Appendix B

ii. *Lake Park Post, Inc. v. Farmer,* A03A0841, 264 Ga. App. 229, 590 S. E. 2d 254 (2003). Appendix A

iii. *Lake Park Post, Inc. v. Farmer,* 2004 Ga. LEXIS 373 (Ga., April 27, 2004). Appendix C

STATEMENT OF JURISDICTION

i. The opinion of the Court of Appeals of Georgia was entered November 24, 2003.

ii. The Supreme Court of Georgia denied petition for writ of certiorari on April 27, 2004.

iii. The jurisdiction of this Court is invoked under 28 USC §1257

CONSTITUTIONAL PROVISIONS

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Amendment I, Constitution of the United States of America.

All persons born are naturalized in the United States and subject to the jurisdiction thereof, are citizens of the

United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Amendment XIV, Section I, Constitution of the United States of America.

STATEMENT OF THE CASE

Al Parsons is the publisher and only regular employee of the Lake Park Post, which is published sporadically in Lowndes County Georgia. Parsons and The Post was sued by Kevin Farmer, a deputy sheriff, for libel. The parties agreed that Farmer is a public official.

Kevin Farmer arrested Willie Williams for a misdemeanor. Williams allowed himself to be handcuffed with his hands behind him, but resisted being put into the back of Farmer's patrol car. Farmer tried to force Williams into the car. When Williams continued to resist, Farmer threw Williams onto the asphalt street with an "arm bar take down". This flipped Williams on his face onto the pavement.

The pathologist testified that Williams died of a subdural hematoma. He also had hemorrhage of the right neck, fractures of one rib and C-6 vertebra, and large bruises of the chest and back.

The death of Williams at the hands of a deputy caused a storm of public outcry, a number of meetings and demonstrations, and the formation of a People's Tribunal to learn

why Williams was killed during an arrest for a misdemeanor, and why he received these injuries.

Part of the arrest was captured on a patrol car video, but the picture was obscure because it was dark and the men were in the periphery of the picture. The video was shown at several meetings at local churches. Farmer had a lighted police flashlight, and it appeared to some seeing the video that Farmer struck Williams with the flashlight.

Al Parsons believed the video showed Farmer striking Williams on the head with the flashlight, which was consistent with the wounds received by Williams. He and Charles Moore, a part time contributor to the Post, published a series of articles in which they criticized Farmer for his killing of Williams. (Enhancements of the video made after the suit was filed suggested that Farmer did not strike Williams with the flashlight. The Post published this development as well.) Farmer sued The Post, Parsons and Moore for libel.

The petitioners raised their constitutional defenses in their amended answer to the complaint:

> "The articles and editors in the Lake Park Post complained of in the complaint are protected as expression of free speech under the First and Fourteen Amendments of the Constitution of the United States, and under Article I, Section 1, Paragraph V of the Constitution of Georgia." (Fourth Defense)

At the close of the plaintiff's evidence the petitioners moved for a directed verdict:

> "Mr. Bright: The plaintiff having rested, your honor, the defendant is moving for a directed verdict on the grounds

that there is no proof sufficient to warrant a finding of malice.

The Court: Alright. Motion is denied at this point . . ." (T. 373)

At the close of the evidence the defendants renewed their motion:

"The Court: Mr. Bright, can I assume you are going to renew your motion?

Mr. Bright: I do renew my motion . . .

The Court: In the same ruling I will deny them . . .". (T. 495)

The jury found for the plaintiff. (Appendix B)

Petitioners appealed to the Court of Appeals of Georgia solely on the denial of the directed verdict, upon the grounds that the evidence was insufficient to establish actual malice as required by *New York Times v. Sullivan*, 376 U.S. 415 (1964).

ARGUMENT

The Georgia Court of Appeals disregarded the opinions of this Court and imposed an unconstitutional restriction on the First Amendment right of freedom of the press.

The Georgia Court of Appeals, after giving lip service to *Sullivan* and this Court's opinions on the First Amendment and newspaper libel, disregarded those opinions and issued an opinion which conflicts with the relevant decisions of this Court.

The Court of Appeals focused on whether or not Williams was killed by a blow from Deputy Farmer's flashlight. This was considered at one time to be the cause of Williams' death, not only by Parsons and The Post but also by the Valdosta Daily Times the local daily paper, and by members of the Sheriff's own advisory committee.

The Court of Appeals argumentative opinion held that the evidence supported the finding that the articles were published with "constitutional malice". Appendix A, p. 305. The Court held that "The Lake Park Post defendants' malice is revealed both by what they published and what they did not publish. Anyone reading the articles would not know that the eyewitnesses, the coroner's inquest, the medical examiner's report, and the GBI report contradicted the allegations that Lake Park Post, defendants made." Appendix A, p. 305.

In fact, The Post reported, " . . . the coroner's jury in a 3-2 vote (split along racial lines) ruled the death an accident and the Grand Jury, lead by District [Attorney] J. David Miller, also ruled it an accidental death." (The Post, September 23, 1999) (T. 680).

"Under oath Farmer said he did not beat Williams, that Williams fell down resisting, and that he later took him down while handcuffed." (The Post, September 9, 1999) (T. 659).

"The GBI investigation, a non investigation by the local FBI and U.S. Marshall's office, a coroner's inquest, and a grand jury have apparently cleared the Sheriff's department of any wrongdoing." (The Post. October 7, 1999) (T. 689).

The Court of Appeals went on:

> "In particular, no reader of The Post would know that the medical examiner attributed Williams's death to what otherwise would have been a minor injury except for Williams brain atrophy and liver damage caused by his chronic alcoholism." Appendix A, p. 305. (The medical examiner did not say that.) (Appendix E)

The Court of Appeals concluded " . . . that the defendant so doubted the truthfulness of their articles that they refused to print any information that contradicted their version of the events." Appendix A, p. 305.

This ruling by the Court of Appeals of Georgia makes a newspaper liable for failure to print information that may contradict the newspaper's version of events and holds that the publisher is guilty of constitutional malice for failing to report facts that may refute the newspaper's interpretation of the news.

A public figure suing a newspaper must prove by clear and convincing evidence that the newspaper acted with actual malice. Actual malice is either knowledge that the statements published were false or that the statements were published with the reckless disregard of whether or not they were false. *New York Times v. Sullivan. Sullivan* does not require that a newspaper publish any facts that may refute its own assertions.

New York Times v. Sullivan recognizes that it is a "prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions." *Bridges v. California*, 314 U.S. 252, 270 (1941) and this opportunity is to be afforded with "vigorous" advocacy, no less than "abstract discussion". *NAACP v. Button*, 371

U.S. 415, 429 (1961); *New York Times v. Sullivan*, 376 U.S. 254, 269.

In *New York Times* this Court held that presence of stories in the Time's own files which might question the accuracy of the publication would not constitute malice.

The Court of Appeals of Georgia, contrary to this rule, holds that a newspaper must not only go through its file, but must make investigation and disclose anything that may contradict its assertion of authority.

In *St. Amant v. Thompson*, 390 U.S. 727 (1968) this Court held that "reckless conduct is not measured by what a reasonable prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubt shows reckless disregard for truth or falsity and demonstrates actual malice." (390 U.S. at 731) *St. Amant* holds that failure to investigate does not in itself establish bad faith, citing *New York Times v. Sullivan*. The Georgia Court of Appeals imposes upon the Lake Park Post the duty to investigate and report any information that contradicted their version of the events.

A newspaper writing a "hot news" story, unlike a lawyer writing a brief, is not required to cite all contrary authority. If that becomes the rule all political newspaper and magazines will disappear.

When Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman and Robert Livingston set out in specific detail the "repeated injuries and usurpations" of King George III, they did not feel compelled to mention

their enjoyment of the rights of Englishmen, the British defense of the colonies during the Seven Year War, or the trade advantages of the empire, which allowed the colonies to progress from starvation to the prosperity that emboldened them to stand up to the Crown. *The Declaration of Independence*, 1776.

CONCLUSION

The Court of Appeals of Georgia has imposed an intolerable restriction on the First Amendment freedom of the press, contrary to the decisions of this Court. Review of this decision by the Writ of Certiorari is necessary to restore to these petitioners and to Georgians their rights guaranteed by the First and Fourteenth Amendment.

Respectfully submitted,

J. CONVERSE BRIGHT
(*Counsel of Record*)

Counsel for Petitioners
The Lake Park Post, Inc.
and Al Parsons

July 26, 2004

APPENDIX A

LAKE PARK POST, INC. et al. v. FARMER; MOORE v. FARMER.

A03A0841, A03A0842.

COURT OF APPEALS OF GEORGIA, FIRST DIVISION

264 Ga. App. 299; 590 S.E.2d 254; 2003 Ga. App. LEXIS 1467; 2003 Fulton County D. Rep. 3592

November 24, 2003, Decided

COUNSEL: J. Converse Bright, for appellants (case no. A03A0841).

Cork & Cork, Patrick C. Cork, for appellant (case no. A03A0842).

Balch & Bingham, Michael J. Bowers, Christopher S. Anulewicz, Langdale, Vallotton & Linahan, William P. Langdale, Jr., for appellee.

JUDGES: BARNES, Judge. Andrews, P. J., and Adams, J., concur.

OPINION BY: BARNES

OPINION: BARNES, Judge.

In these appeals, the Lake Park Post, Inc., its editor and publisher Al Parsons, and its columnist Charles Moore (collectively "the Lake Park Post defendants") challenge a judgment based on a jury verdict for compensatory and punitive damages in favor of Kevin Farmer for $225,000.[1]

[1] The jury assessed compensatory damages of $65,000 and punitive damages of $10,000 against each defendant.

Farmer, a deputy sheriff, sued the Lake Park Post defendants for libel after the paper published a series of articles, written by Parsons and Moore, that stated that Farmer murdered Willie James Williams by brutally and repeatedly hitting Williams with a flashlight while he was handcuffed and not resisting arrest. The paper published an article stating that "enhanced video footage shows Deputy Kevin Farmer beating Williams with a flashlight." Williams died on September 1, 1998, and the articles on which this case is based were published after August 5, 1999.

Although Farmer demanded a retraction, the Lake Park Post defendants refused to publish one, and continued to publish articles stating that Farmer beat Williams with a flashlight and caused his death. In all, according to Farmer, the Lake Park Post defendants called Farmer a murderer 17 times and reported that he brutally beat Williams with the flashlight 48 times.

The Lake Park Post defendants do not contend that the statements in the articles were true. Instead, the only issue that they argue is that the trial court erred by denying their motions for a directed verdict because Farmer, a public official failed to prove by clear and convincing evidence that the statements were made with actual malice, i.e., knowing that they were false or with a reckless disregard for their falsity. We disagree and affirm.

1. When reviewing a trial court's denial of a motion for a directed verdict, appellate courts "must review and resolve the evidence and any doubt or ambiguity in favor of the verdict. A directed verdict . . . is not proper unless there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions

therefrom, *demands* a certain verdict." (Citations and punctuation omitted.) *Southern Store &c. Co. v. Maddox,* 195 Ga. App. 2, 3 (1) (392 S.E.2d 268) (1990). Further, "we have an independent obligation as an appellate court to examine this record and determine if this verdict and judgment was supported by clear and convincing proof of actual malice. *Bose Corp. v. Consumer's Union,* 466 U.S. 485, 511 (104 S. Ct. 1949, 80 L. Ed. 2d 502)." *Miller v. Woods,* 180 Ga. App. 486, 489 (349 S.E.2d 505) (1986). Our obligation is "'to make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Bose Corp. v. Consumer's Union, supra,* 466 U.S. at 499.

2. With

> the United States Supreme Court's decision in *New York Times Co. v. Sullivan,* [376 U.S. 254 (84 S. Ct. 710, 11 L. Ed. 2d 686) (1964)] the law of defamation has undergone substantial changes. [*See* Restatement (Second) of Torts (1977), Div. 5, Ch. 24-27, special note.] The Restatement now lists four elements in a cause of action for defamation: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special harm or the actionability of the statement irrespective of special harm. When, as here, a libel action involves a speech of public concern, a plaintiff must show that the defendant published a defamatory statement about the plaintiff, the defamatory statement was false, the defendant was at fault in publishing it, and the plaintiff suffered actual injury from the statements.

(Punctuation and footnotes omitted.) *Mathis v. Cannon,* 276 Ga. 16, 20-21(2) (573 S.E.2d 376) (2002). Further, *New York Times v. Sullivan, supra,* held

> that the constitutional guarantees of free speech and free press prohibited a public official from recovering damages for defamatory criticism of his conduct unless the official proves the statement was made with "actual malice." This standard requires the public official to prove that the defendant had knowledge that the statement was false or was made with reckless disregard of whether it was true or false.

(Punctuation and footnotes omitted.) *Mathis v. Cannon, supra,* 276 Ga. at 21(3); *Atlanta Journal-Constitution v. Jewell,* 251 Ga. App. 808, 816(3) (555 S.E.2d 175) (2001). Thus, a public official "may recover on his libel claim, so long as he demonstrates, by clear and convincing evidence, that the statements complained of were made with actual malice." *Davis v. Shavers,* 269 Ga. 75, 76 (495 S.E.2d 23) (1998).

All parties agree that, as a deputy sheriff, Farmer is a public official who must meet the actual malice test. *Sparks v. Thurmond,* 171 Ga. App. 138, 141(1) (319 S.E.2d 46) (1984); *Pierce v. Pacific & Southern Co.,* 166 Ga. App. 113, 116 (303 S.E.2d 316) (1983). *See,* however, *Ellerbee v. Mills,* 262 Ga. 516, 517(1) (422 S.E.2d 539) (1992), holding that a school principal was not a public official because principals generally "are removed from the general conduct of government, and are not policymakers at the level intended by the *New York Times* designation of public official."

In the context of libel actions brought by public officials,

> reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. *St. Amant v. Thompson,* 390 U.S. 727, 731 (88 S. Ct. 1323, 20 L. Ed. 2d 262, 267) (1968). Stated differently, it has been held that "reckless disregard" is established by evidence showing that the defendant acted with a "high degree of awareness of probable falsity." *Gertz v. Robert Welch, Inc.,* 418 U.S. 323 (94 S. Ct. 2997, 41 L. Ed. 2d 789) (1974).

(Punctuation omitted.) *Sparks v. Thurmond, supra,* 171 Ga. App. at 140(1). "Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice. Also, failure to investigate does not in itself establish bad faith." (Citation and punctuation omitted.) *Williams v. Trust Co. of Ga.,* 140 Ga. App. 49, 55(III) (230 S.E.2d 45) (1976). Constitutional malice concerns "awareness of actual or probable falsity, or his reckless disregard for their falsity." *Id.* at 56.

> The defamatory statement may be false but it is still not actionable unless it was uttered with knowledge of its falsity or in reckless disregard for the truth. Truth or falsity is not the constitutional test; the statements must be published with actual knowledge of their falsity or with reckless disregard for their falsity. Even if the story is indeed false, plaintiff must meet that standard.

(Citations and punctuation omitted.) *Id.* at 62 (IV). Also, in cases concerning libel of public officials, actual malice

> does not necessarily extend to ill will, hatred or actions calculated to injure for this may run afoul of the freedom of speech protected by the First Amendment. *Garrison v. Louisiana,* 379 U.S. 64, 72 (85 S. Ct. 209, 13 L. Ed. 2d 125)]. Moreover, knowledge of falsity or reckless disregard of the truth may not be derived solely from the language of the publication itself. *Williams v. Trust Co. of Ga., supra* at pp. 55-56. Constitutional malice does not involve the motives of the publisher but is based upon his awareness of actual or probable falsity or his reckless disregard for possible falsity. Reckless disregard requires clear and convincing proof that [the Lake Park Post defendants were] aware of the likelihood [they were] circulating false information. *New York Times Co. v. Sullivan,* [*supra*]. Thus it is not sufficient to measure reckless disregard by what a reasonably prudent man would have done under similar circumstances nor whether a reasonably prudent man would have conducted further investigation. The evidence must show in a clear and convincing manner that [the Lake Park Post defendants] in fact entertained serious doubts as to the truth of [their] statements in the [paper]. *Williams v. Trust Co. of Ga., supra* at p. 55. . . . Such actual malice may not be presumed but is subject to being proven with convincing clarity. *New York Times Co. v. Sullivan, supra* at 284.

Miller v. Woods, supra, 180 Ga. App. at 488. "Absent an admission by the defendant that he knew his material was false or that he doubted its truth, a public figure must rely upon circumstantial evidence to prove his case. [Cits.]"

News Publishing Co. v. DeBerry, 171 Ga. App. 787(1) (321 S.E.2d 112) (1984).

Applying these principles, we are satisfied that Farmer met his burden of proving by clear and convincing evidence that the Lake Park Post defendants acted with constitutional malice when publishing these articles. Even though Parsons and Moore testified that they believed the statements in the articles were true, the evidence plainly demonstrates that they had no reason for doing so. The Lake Park Post defendants repeatedly labeled Farmer as a murderer and Moore said that he "lynched" Williams when no proof existed to support either version. More significantly, Parsons and Moore had available to them abundant evidence that these claims were false.

Viewed in support of the verdict, the evidence shows that Farmer stopped Williams for driving on the wrong side of the road at 2:00 a.m. on September 8, 1998. After first disobeying Farmer's command to stop his car and then refusing to leave his car, Williams then did so. He was unable to produce his driver's license and insurance card, and then gave Farmer a name and date of birth which did not match the computer records. These factors, combined with Williams's driving, his slurred speech, and the strong smell of alcohol on his person, caused Farmer to arrest Williams.

Williams, however, resisted Farmer's efforts. Although told not to, he put his hands in his pockets and resisted Farmer when he put handcuffs on Williams. After Williams was handcuffed, Farmer searched Williams and found a prisoner identification card and a pocketknife. When information from the prisoner identification card

was checked on the computer, the information showed that a warrant for Williams's arrest existed.

Williams then physically resisted Farmer's efforts to put him in the back of the patrol car. During this resistance, Williams fell on the ground. After Farmer helped Williams to his feet, Williams still refused to enter the patrol car and, according to Farmer, began pulling, pushing, and kicking at Farmer.[2] At one point Williams escaped Farmer's control, and then Farmer executed a maneuver known as an "arm-bar take down" to regain control of Williams.

Farmer denied hitting Williams with anything, particularly with his flashlight. A video of the event, taken by the camera in the patrol car of a backup officer who responded, shows that Farmer's flashlight was attached to his police belt during the incident. All the eyewitnesses to the event, two of whom were called as defense witnesses, also testified that Farmer never hit Williams with anything. The whole incident was recorded on the videos taken by cameras in the patrol cars of the two deputies and played to the jury.

Another defense witness, Williams's girlfriend, testified, however, that Williams told her after his arrest that Farmer hit him, and another witness testified that she concluded from the video she saw that Farmer hit Williams. Neither of these witnesses was an eyewitness to the event.

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[2] Eyewitnesses to the incident, however, testified that they did not see Williams kick at or strike Farmer.

A Georgia Bureau of Investigation medical examiner, after performing an autopsy, concluded in his report that Williams died from blunt force trauma to the head that was received when Farmer took him to the ground. In December 1998, the examiner testified at the coroner's inquest that Williams died from injuries sustained in the fall and not from being beaten. The medical examiner also reported and testified at the coroner's inquest that Williams's chronic alcoholism was a significant contributing factor to his death because damage to the liver affected his blood's capacity to clot and atrophy of the brain caused the brain to twist around in his skull and cause the bleeding.

The medical examiner testified that without these contributing factors another person falling as Williams did would not have died. Parsons attended the coroner's inquest and heard this witness so testify before writing the articles at issue.

Shortly after Williams's death, the GBI investigated the incident and interviewed over 90 witnesses. The GBI investigation found no evidence that Farmer hit Williams with a flashlight or anything else. This report was made available to the district attorney who presented the case at the coroner's inquest. The coroner's inquest called 30 witnesses and concluded that Williams's death was accidental. The case was also presented to a grand jury which refused to indict Farmer. All of this information was available to the Lake Park Post defendants *before* they published the articles that gave rise to this litigation.

The Lake Park Post defendants contend that the Williamses' family attorney showing the videos of the incident is what broke the story they reported. The first showing was on August 26, 1999, to about 200 people at

the public library. The attorney had been retained by the Williams family to pursue a wrongful death action on their behalf. The video showed Farmer and Williams struggling, and the audience, including Parsons, decided that they saw Farmer beating Williams with a flashlight. The video was shown a second time at a church on September 5 and, according to Parsons, again showed Williams being beaten with a flashlight.

Parsons testified that his articles were based on hearing sworn testimony at the coroner's inquest hearing and hearing the sworn testimony seeing the videotapes from the deputies' patrol cars, reviewing the GBI report, reading the medical examiner's report, and interviewing four witnesses. These four witnesses, however, were not eyewitnesses to the event.

Parsons also spoke with a man who saw Williams in jail shortly before his death. According to this person, Williams could hardly speak because his lips were so swollen, his arm was in a sling, and he had a gauze bandage on his jaw. Williams allegedly told this person that, "They pushed me down, they beat me up, they did this to me."

Farmer's claims against Moore are based on two editorial columns Moore wrote about the incident. The first, on August 5, 1999, entitled "It's a Strange Land Indeed," stated that "Williams died of a fatal head injury after he was beaten while in the custody of the Lowndes County Sheriff's Department." The column stated that, according to others, a video showed Williams actually being beaten. The column then went on to connect this incident to one 80 years before in which a black woman had been lynched by a white mob. Moore stated that

Williams's lynching "was conducted by a mob wearing badges." Moore's second column, dated October 7, 1999, was entitled "We've Got to Stop the Good Old Boy Network." He stated that Williams "died while in the sheriff's custody a year ago, after being beaten by sheriff's deputies."

Moore testified unequivocally that he believed his columns were true. He also testified that he had read portions of the coroner's report and relied on information from Parsons. He testified that he thought the incident was comparable with the earlier lynching because in both cases the establishment refused to address the concerns of minorities. He further testified that he used the term "lynching" as "hyperbole, . . . a figure of speech."

When he wrote his first column on August 5, 1999, that Williams was murdered with a flashlight, however, Moore had not seen the videos. He did not attend the coroner's inquest or read its complete transcript, did not review the GBI report, or interview any witnesses. After this suit was filed, Moore interviewed one witness, and although he interviewed another witness earlier, he testified that he did not rely on this witness in his columns.

Defendants in these actions,

> cannot, however, automatically insure a favorable verdict by testifying that [they] published with a belief that the statements were true. Recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports. When an article is not in the category of "hot news," that is, information that must be printed immediately or it will lose its newsworthy value, actual malice

> may be inferred when the investigation for a story was grossly inadequate in the circumstances.

(Citations and punctuation omitted.) *News Publishing Co. v. DeBerry, supra*, 171 Ga. App. at 788 (1).

We are satisfied that the evidence fully supports the jury's conclusion that the Lake Park Post defendants published the articles in question with constitutional malice. *News Publishing Co. v. DeBerry, supra*, 171 Ga. App. at 789. The Lake Park Post defendants' malice is revealed both by what they published and what they did not publish. Anyone reading their articles would not know that the eyewitnesses, the coroner's inquest, the medical examiner's report, and the GBI report contradicted the allegations the Lake Park Post defendants made. In particular, no reader of the Post would know that the medical examiner attributed Williams's death to what otherwise would have been a minor injury except for Williams's brain atrophy and liver damage caused by his chronic alcoholism.

We conclude that the defendants so doubted the truthfulness of their articles that they refused to print any information that contradicted their version of the events. Under these circumstances, the judgment of the trial court is affirmed.

Judgments affirmed. Andrews, P. J., and Adams, J., concur.

APPENDIX B

IN THE SUPERIOR COURT OF LOWNDES COUNTY
STATE OF GEORGIA

KEVIN FARMER, Plaintiff, v. LAKE PARK POST, INC., AL PARSONS and CHARLES MOORE, Defendants.	)	CIVIL ACTION NO.: 2000-CV-308

JUDGMENT ON JURY VERDICT

This action came for trial before a jury and the Court, the Honorable Harry Jay Altman, II, Superior Court Judge presiding. The issue of damages having been presented, and the jury having rendered its verdict in favor of the Plaintiff and against the Defendants, judgment is entered as follows:

Judgment is hereby entered in favor of Plaintiff Kevin Farmer and against Defendant Lake Park Post, Inc. in the amount of $65,000.00 in compensatory damages, with interest thereon as provided by law, together with costs.

Judgment is hereby entered in favor of Plaintiff Kevin Farmer and against Defendant Lake Park Post, Inc. in the amount of $10,000.00 in punitive damages, with interest thereon as provided by law, together with costs.

Judgment is hereby entered in favor of Plaintiff Kevin Farmer and against Defendant Al Parsons in the amount of $65,000.00 in compensatory damages, with interest thereon as provided by law, together with costs.

Judgment is hereby entered in favor of Plaintiff Kevin Farmer and against Defendant Al Parsons in the amount of $10,000.00 in punitive damages, with interest thereon as provided by law, together with costs.

Judgment is hereby entered in favor of Plaintiff Kevin Farmer and against Defendant Charles Moore in the amount of $65,000.00 in compensatory damages, with interest thereon as provided by law, together with costs.

Judgment is hereby entered in favor of Plaintiff Kevin Farmer and against Defendant Charles Moore in the amount of $10,000.00 in punitive damages, with interest thereon as provided by law, together with costs.

6/28/02

/s/ Harry Jay Altman
Honorable Harry Jay Altman, II
Judge, Superior Court of
Lowndes County

Filed and entered in the
Clerk's Office this 8th day
of July, 2002.

By: /s/ Melissa Norman
Deputy Clerk

Order prepared by:

/s/ Chris S. Anulewicz
Michael J. Bowers
Georgia Bar No. 671650
Christopher S. Anulewicz
Georgia Bar No. 020914

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APPENDIX C

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: April 27, 2004

J. Converse Bright
P.O. Box 5889
Valdosta GA 31603

Case No. S04C0630
LAKE PARK POST, INC, et al. v. KEVIN FARMER

COURT OF APPEALS CASE NO. A03A0841

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur, except Benham and Carley, JJ., who dissent.

Sherie M. Welch, Clerk

APPENDIX D

TO THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

THE LAKE PARK POST, AL PARSONS, and CHARLES MOORE	:	
Petitioners	:	CASE NO.
vs.	:	
KEVIN FARMER,	:	
Respondent	:	

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

The petition of The Lake Park Post, Inc., Al Parsons and Charles Moore respectfully shows:

TYPE OF CASE AND SUPREME COURT JURISDICTION

1.

This is a case of newspaper libel brought by a public official, which invokes the First and Fourteenth Amendments of the United States Constitution and Article I, Section I, Paragraph V of the Constitution of Georgia. The case is one of gravity and importance because it involves basic First Amendment rights which are compromised by the opinion of the Court of Appeals.

2.

This Court has jurisdiction to review the opinion of the Court of Appeals by certiorari. (Constitution, Article VI, Section VI, Paragraph V.

Petitioners seek writ of certiorari to the Court of Appeals for review of the opinion of the Court of Appeals entitled *Lake Park Post, et al v. Farmer and Moore*, A03A0841 and *Moore v. Farmer* A03A0842 decided November 24, 2003.

Kevin Farmer, a deputy sheriff and public official sued *The Lake Park Post*, a monthly newspaper, Parsons, its editor, and Moore, its columnist, for libel. Defendants moved for directed verdict at the close of the evidence. Motion was denied and verdict returned and judgment entered against each defendant for $65,000.00 compensatory damages and $10,000.00 punitive damages.

Appeal was taken to the Court of Appeals from the denial of motions for directed verdict. The Court of Appeals affirmed, finding actual malice in the publications. (Opinion, November 24, 2003) Petitioners filed Notice of Intent to Apply for the Writ of Certiorari in the Court of Appeals December 1, 2003.

LEGAL ISSUES RAISED

(1) The Court of Appeals' opinion imposes an unconstitutional standard upon a newspaper by inferring malice from the newspaper's failure publish [sic] all facts that might refute the newspaper's report of a controversial news story.

(2) The Court of Appeals' opinion deprives the individual petitioners of their First Amendment right by implying malice because the court found that the writers failed to print information that contradicted the writers' version of events.

(3) The Court of Appeals' opinion requires journalists writing about public figures to publish at risk of a ex post facto finding that the publisher did not sufficiently investigate, or sufficiently publish all facts which might rebut the writer's interpretation of controversial public issues.

STATEMENT OF FACTS

On September 1, 1998 Kevin Farmer, Lowndes County deputy sheriff, stopped a car that was traveling slow, but in the wrong lane on a street in Valdosta, Georgia.

(T. 302-3113).

Farmer noticed the smell of alcohol. The driver's stated birthdate did not match the ID card in his pocket. Farmer decided to arrest the driver, Willie James Williams. He handcuffed Williams with Williams' hands behind his back. (T. 320).

Williams resisted Farmer's attempts to put him into Farmer's patrol car, but according to eyewitnesses, did not attack Farmer. (T. 321). Farmer threw Williams to the ground twice, the second time with an "arm bar take-down". (T. 325-332). This arm bar take-down, done with William's hands handcuffed behind him, flipped Williams onto his face onto the pavement. Eyewitnesses saw

Farmer flip [sic] Williams into the pavement and the puddle of blood where William's head hit. (T. 378, 379, 389, 390, 928).

Willie Williams died of a 180 gram subdural hematoma on the left side of the brain according to GBI pathologist, Anthony Clark, M.D.. (T.115). He also had a hemorrhage of the right neck area, a fracture of a rib and the C-6 vertebra and a large amount of bruising in the chest and injury to the right lower back.

(T. 116-118).

In Dr. Clark's opinion, death was caused by the blow to the right side of Williams' face, which caused the brain to slush and rotate, tearing the vessels on the left side of the brain and causing the hematoma. This mechanism was complicated by the fact that Williams had symptoms of chronic ethanolism [sic]. (T. 1020-1018).

Al Parsons ran the *Lake Park Post*, a one man, sporadically published local paper in Lowndes County, Georgia. Charles Moore was an unpaid volunteer columnist for *The Post*. A few days after Williams' death, Parsons received an anonymous tip that someone had died in the jail; he spoke to Rosa Greene, the sister of Willie James Williams, who questioned the cause of death of her brother. (T. 421).

Ricky Lane told Parsons that he had seen Williams shortly before his death and that Williams could barely speak because his lips were so swollen, his arm was in a sling and he had a bandage on his jaw. (T. 422).

Parsons obtained a copy of the autopsy report, which stated that Williams died from complications of blunt force, head trauma, and that "the officer took the decedent

to the ground and reportedly, this is when the decedent received his head/neck injuries. This unprotected fall resulted in subdural hematoma and a cervical spinal fracture as noted at autopsy." (T. 839). The medical examiner noted the manner of death as "homicide". (T. 839).

The Lake Park Post's first article (October 16, 1998) reported that Williams died of blunt force trauma of the head "that which [sic] was ruled by the State Lab." (T. 424).

News of Williams' death was received with a storm of public outcry from citizens who could not understand why someone should die by arrest for driving on the wrong side of the road. The coroner convened an inquest on December 2, 1998. The coroner incorrectly reported to the press that the coroner's verdict was unanimous that the death was accidental. Actually, the verdict was 3-2. (Williams is black; Farmer is white. There were three white jurors and two black jurors.) The coroner's inquest further held:

> "We recommend strongly that the case be presented to the December term of the Lowndes County Grand Jury as a special presentment for consideration of criminal charges in connection with Mr. Williams' death". (T. 1073).

After attending the coroner's inquest the *Lake Park Post* reported:

> " . . . whether he was beaten or violently slammed to the pavement by Deputy Sheriff Farmer, as Dr. Joyce testified, Mr. Williams still died because of the action or actions of another." (T. 428).

The grand jury declined to indict Farmer.

The public was not satisfied. A group of citizens formed The People's Tribunal to investigate the death. The People's Tribunal held a number of public meetings and demonstrations. (T. 437) and opened a web site where the autopsy pictures and information concerning the death of Willie James Williams were published. (T. 437).

On August 26, 1999, a video from the camera in a backup deputy's car, was shown to about 200 people at the public library in Valdosta, Georgia, by a lawyer representing the Williams family. The video, claimed [sic] to be "enhanced", but difficult to make out, showed Williams and Farmer struggling in the right edges of the screen. The lawyer explained that the video showed Farmer beating Williams with a flashlight. Parsons and other people at the meeting accepted this version of the video. (T. 439).

On September 5, 1999 the community was still asking why a citizen arrested for a misdemeanor should die with the severe wounds shown in the Willie Williams mug shot. On that date a video was shown at St. James AME Church. The video was presented as an "enhanced" video that showed Farmer beating Williams with a flashlight. Parsons and others there accepted that interpretation of the video.

The Court of Appeals opinion relies upon *News Publishing Company v. Duberry, 171 Ga. App. 787, 321 S.E. 2d 112 (1984), for* the proposition that:

> "When an article is not in the category of "hot news", that is information that must be printed or it will loose [sic] its newsworthy value, actual malice may be inferred in the investigation of a

> story that was grossly inadequate in the circumstances." (Opinion, pg. 13.)

What the Court of Appeals ignores is that this story **was** "hot news". The community was up in arms. A group of citizens formed the People's Tribunal to investigate the death of Willie James Williams because citizens were not satisfied with the official explanations delivered through the coroner, the divided coroner's jury and the District Attorney's office, which obtained a no bill for Kevin Farmer. People in Lowndes County did not accept that an unarmed citizen should die from a brain injury in a misdemeanor arrest, nor that an unarmed and uncombative citizen should receive the severe injuries showed in Willie James Williams' mug shot. The news was "hot news" and Al Parsons, Charles Moore and *The Lake Park Post*, along with thousands of other citizens, were searching for an answer. The "enhanced video," which was shown at least twice in the community and which was presented as showing Kevin Farmer hitting Williams with a flashlight, seemed to answer the questions of how Willie Williams could have obtained these injuries.

THE ARTICLES SUED UPON:

On August 5, 1999, Charles Moore wrote in *The Post:*

> "The death of Willie James Williams last September is a case on point. Williams died of fatal head injury [sic] after he was beaten while in the custody of Lowndes County Sheriff's Department."

"Because the lynching of Williams was conducted by a mob wearing badges, the community's establishment decided to close their eyes and not see the injustice." (Pl. Ex 5, T. 597).

It is undisputed that Willie James Williams died of a fatal head injury inflicted by a deputy sheriff while he was in the custody of Lowndes County Sheriff's Department. The reference to "lynching" was obviously a figure of speech and was not intended literally.

On August 26, 1999, *The Post* said:

"But irrefutable facts remain that cops killed him. They beat him on the street and they probably beat him in the jail until he died later in the jail."

"The enhanced video showed Deputy Kevin Farmer beating Williams with a flashlight, something he said he did not do in Exum Corner's Court."

"Williams was handcuffed at the time, he was handcuffed while he was being beaten when his teeth were knocked out, his ribs separated and his neck broken." (Pl. Ex. 8, T. 633).

Williams did have his teeth knocked out, his ribs separated and a cervical vertebra broken and that he received these injuries when he was handcuffed.

On September 2, 1999, *The Post* reported: "Farmer is the deputy who beat Willie James Williams with a flashlight." (Pl. Ex 9., T. 647).

This was reported in the context of reporting a rally of the People's Tribunal which was still meeting and demonstrating against the death of

> Willie James Williams. This was indeed "hot news".
>
> On September 9, 1999 *The Post* reported on a "March for Justice," staged by the People's Tribunal, protesting the beating of Willie James Williams and the arrest of a Valdosta State University faculty wife during the demonstration.

The Court of Appeals held that the petitioners acted with malice and were liable because:

> "Anyone reading their articles would not know that the eyewitnesses, the coroner's inquest, the medical examiners report and the GBI report contradicted the allegations The Lake Park Post defendants made."
>
> and that
>
> " . . . the defendants so doubted the truthfulness of their articles that they refused to print any information that contradicted their version of the events."
>
> (Court of Appeals opinion, pg. 14).

However on September 23, 1999 in one of the articles that the plaintiffs sued upon *The Post* reported:

> "In another grand jury inquiry conducted by District Attorney David Miller, Deputy Kevin Farmer was not indicted in the killing of Willie James Williams.
>
> The death was ruled an accident by David Miller's grand jury despite the fact that Farmer beat the handcuffed Williams on the head repeatedly with a heavy flashlight". (Pl. Ex. 11, T. 671).

The Post on September 2 and September 9 reported that the enhanced video showed Kevin Farmer beating Williams with a flashlight. (Pl. Ex. 23, T. 176, Pl. Ex 12, T. 683, Pl. Ex. 23, T. 176).

In the final article sued upon *The Post* said of Willie James Williams:

"He was severely beaten and died in police custody the next day." (Pl. Ex 16, T. 738).

This statement is acknowledged by all parties to be true.

The action was filed February 11, 2000 based on the articles listed above. (R. 7).

At trial the court denied defendants' motion for directed verdict. The jury returned verdicts for the plaintiff. Defendants appealed the denial of the motion for directed verdicts. The Court of Appeals affirmed.

APPENDIX E

CORONER'S INQUEST

LOWNDES COUNTY, GEORGIA

IN RE: INQUEST INTO CIRCUMSTANCES SURROUNDING THE DEATH OF: WILLIE JAMES WILLIAMS

* * *

December 2, 1998

9:00 A.M.

LOWNDES COUNTY COURTHOUSE
MAIN COURTROOM

VALDOSTA, GEORGIA

CORONER CHARLES EXUM, Presiding

* * *

MEMBERS OF CORONER'S JURY:

Deloise Bivins
Eddie Koonce
Sara R. McArthur
Stuart Mullis, Foreman
Sandra Seago
Melvin James Wright (Alternate)

APPEARANCES

FOR THE STATE: J. DAVID MILLER
District Attorney
Post Office Box 99
Valdosta, Georgia 31603-0099

DEBRA HOLCOMBE NAGY
Certified Court Reporter
Post Office Box 1172
Valdosta, Georgia 31603-1172

[154] Q Dr. Clark, based on your examination, what was your opinion of the cause of death of Mr. Williams?

A The cause of death was this massive subdural hematoma that had formed and complications from that, and this arose from the blunt trauma that he received of [sic] the head.

Q Okay. And how did this chronic ethanolism contribute to that, if at all?

A My opinion, if you had an individual who had not – had a normal size brain that filled up the brain cavity as it should have, there would not have been as severe of injury to [155] the brain as we see in this instance. Now, what's going against him is that one, the brain shrunk down. Now, between the brain and the dura, which is a thick fibrous layer above the brain, there are what we call bridging vessels, and when the brain shrinks down, it stretches those vessels a little bit tighter, okay. It puts them under a little bit more tension so it's easier to tear them so that when there is a blow to the head, whether from a fall or a fist or whatever, and the brain moves around, it's going to tear those vessels. In this instance I felt that the fall to the decedent's right side of his face caused the brain to kind of slosh around and rotate so when this rotation happened, the sloshing around happened, it tore the vessels predominantly on the left side of the brain. This tearing of the vessels caused the bleeding to start, okay. Now, because it had a little bit more space there, you're not going to see neurologic changes right away because the space is going to fill up without putting pressure on the brain. In a normal individual, if it's bleeding quite rapidly and the space can be filled up quickly, it won't – it will show up as neurologic signs; but in an individual like this, and we see this all the time, is

that there is more space there so the blood can flow a lot longer, not cause anything that's going to be obvious on a neurologic exam. The reason it's going to continue to bleed now is that the liver disease. In the liver there are certain factors that are produced that help with [156] clotting. You've probably all heard about some of the things that we use in medicine are these factors to help people with bleeding problems, to help them clot, and in this situation, because the liver is diseased, it's not performing its job by producing these factors. So in chronic alcoholics and in Mr. Williams, the blood – they develop quite an abnormality of blood clotting, and that's what I believe was kind of – continued this on here caused it to keep bleeding and they couldn't seal themselves up with clot.

Q Okay. When you have that accumulation of blood and it presses down on the brain, what's the result of that in the area that it was pressing down on?

A Because of the massive size of this hematoma pressing on the brain, it compresses the vital centers or the cardiorespiratory centers in the mid brain. You have to remember that the skull is a closed box, okay. There's only one way out of the skull is a hole about an inch, inch and a half in diameter at the base of the skull, so this pressure forming in the left side of the brain, and once we push the brain down into the neck essentially, okay, where the spinal column comes out, well the brain is not going to go there, and what happens it starts putting pressure on the vital centers of what we call the pons medulla and the cardiorespiratory centers, and that's what's going to cause, eventually cause death.

* * *